

Assembly Bill No. 211

Passed the Assembly May 19, 2011

Chief Clerk of the Assembly

Passed the Senate August 30, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 4658.5 and 4658.6 of, and to add Section 4658.7 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 211, Cedillo. Workers' compensation: permanent disability benefits.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law, for injuries that cause permanent partial disability and occur on or after January 1, 2004, provides supplemental job displacement benefits in the form of a nontransferable voucher for education-related retraining or skill enhancement for an injured employee who does not return to work for the employer within 60 days of the termination of temporary disability, in accordance with a prescribed schedule based on the percentage of an injured employee's disability. Existing law provides an exception for employers who meet specified criteria.

This bill would provide that the above provisions shall apply to injuries occurring on or after January 1, 2004, and before January 1, 2012.

This bill would provide, for injuries that cause permanent partial disability and occur on or after January 1, 2012, for a supplemental job displacement benefit in the form of a voucher for up to \$6,000 to cover various reeducation and skill enhancement expenses, as specified, which would expire 2 years after the date the voucher is furnished to the employee or 5 years after the date of injury, whichever is later. The bill would exempt employers who make an offer of reemployment or continued employment, as specified, from providing vouchers.

The bill would require the administrative director to adopt regulations implementing the program.

The people of the State of California do enact as follows:

SECTION 1. Section 4658.5 of the Labor Code is amended to read:

4658.5. (a) Except as provided in Section 4658.6, if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability, the injured employee shall be eligible for a supplemental job displacement benefit in the form of a nontransferable voucher for education-related retraining or skill enhancement, or both, at state-approved or accredited schools, as follows:

(1) Up to four thousand dollars (\$4,000) for permanent partial disability awards of less than 15 percent.

(2) Up to six thousand dollars (\$6,000) for permanent partial disability awards between 15 and 25 percent.

(3) Up to eight thousand dollars (\$8,000) for permanent partial disability awards between 26 and 49 percent.

(4) Up to ten thousand dollars (\$10,000) for permanent partial disability awards between 50 and 99 percent.

(b) The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. No more than 10 percent of the voucher moneys may be used for vocational or return-to-work counseling. The administrative director shall adopt regulations governing the form of payment, direct reimbursement to the injured employee upon presentation to the employer of appropriate documentation and receipts, and other matters necessary to the proper administration of the supplemental job displacement benefit.

(c) Within 10 days of the last payment of temporary disability, the employer shall provide to the employee, in the form and manner prescribed by the administrative director, information that provides notice of rights under this section.

(d) This section shall apply to injuries occurring on or after January 1, 2004, and before January 1, 2012.

SEC. 2. Section 4658.6 of the Labor Code is amended to read:

4658.6. The employer shall not be liable for the supplemental job displacement benefit pursuant to Section 4658.5 if the employer meets either of the following conditions:

(a) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, modified work, accommodating the employee's work restrictions, lasting at least 12 months.

(b) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, alternative work meeting all of the following conditions:

(1) The employee has the ability to perform the essential functions of the job provided.

(2) The job provided is in a regular position lasting at least 12 months.

(3) The job provided offers wages and compensation that are within 15 percent of those paid to the employee at the time of injury.

(4) The job is located within reasonable commuting distance of the employee's residence at the time of injury.

SEC. 3. Section 4658.7 is added to the Labor Code, to read:

4658.7. (a) This section shall apply to injuries occurring on or after January 1, 2012.

(b) If the injury causes permanent partial disability, the injured employee shall be entitled to a supplemental job displacement benefit as provided in this section unless the employer makes an offer of reemployment or continued employment meeting both of the following criteria:

(1) The offer of reemployment or continued employment is made no later than 60 days after the receipt by the claims administrator of the first admissible report received from either the primary treating physician, an agreed medical evaluator, or a qualified medical evaluator, in the form prescribed by the administrative director, finding that the disability from all conditions for which compensation is claimed has become permanent and stationary and that the injury has caused permanent partial disability.

(A) The claims administrator shall forward the form prescribed by paragraph (2) of subdivision (h) to the employer for the purpose of fully informing the employer of work limitations resulting from

the injury which are relevant to potential regular work, modified work, or alternative work.

(B) If the employer or claims administrator has provided the physician with a job description for the employee's regular work, proposed modified work, or proposed alternative work, the physician shall evaluate whether the work limitations are compatible with the physical requirements set forth in that job description.

(2) The offer of reemployment or continued employment is for regular work, modified work, or alternative work in a position expected to last for at least 12 months.

(c) The supplemental job displacement benefit shall be furnished to the employee within 20 days after the expiration of the time for determining the employee's entitlement pursuant to paragraph (1) of subdivision (b).

(d) The supplemental job displacement benefit shall be furnished in the form of a voucher redeemable as provided in this section up to an aggregate of six thousand dollars (\$6,000).

(e) The voucher may be applied to any of the following expenses at the choice of the injured employee:

(1) Payment for education-related retraining or skill enhancement, or both, at state-approved or accredited schools, including payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement.

(2) Payment for occupational licensing or professional certification fees, related examination fees, and examination preparation course fees.

(3) Payment for the services of licensed placement agencies, vocational or return-to-work counseling, and résumé preparation, all up to a combined limit of 10 percent of the amount of the voucher.

(4) Purchase of tools required by a training or educational program in which the employee is enrolled.

(5) Purchase of computer equipment, up to one thousand dollars (\$1,000).

(6) Up to five hundred dollars (\$500) as a miscellaneous expense reimbursement or advance, payable upon request and without need for itemized documentation or accounting. The employee shall not be entitled to any other voucher payment for transportation, travel

expenses, telephone or internet access, clothing or uniforms, or incidental expenses.

(f) The voucher shall expire two years after the date the voucher is furnished to the employee or five years after the date of injury, whichever is later. The employee shall not be entitled to payment or reimbursement of any expenses that have not been incurred and appropriately submitted to the employer prior to the expiration date.

(g) An agreement to settle or release a claim for the supplemental job displacement benefit shall be valid and enforceable only if approved by a worker's compensation administrative law judge.

(h) The administrative director shall adopt regulations for the administration of this section, including, but not limited to:

(1) The time, manner, and content of notices of rights under this section.

(2) The form of a mandatory attachment to a medical report to be forwarded to the employer pursuant to paragraph (1) of subdivision (b) for the purpose of fully informing the employer of work limitations resulting from the injury which are relevant to potential regular work, modified work, or alternative work.

Approved _____, 2011

Governor